



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

June 13, 2013

OM 13-15

Mr. Bob Hevey

Re: Hevey v. Coventry Town Council

Dear Mr. Hevey:

The investigation into your Open Meetings Act ("OMA") complaint filed against the Coventry Town Council ("Town Council") is complete. By correspondence dated April 9, 2013, you allege the Town Council violated the OMA when it held a meeting on Tuesday, April 9, 2013 without forty-eight (48) hours notice, in violation of Rhode Island General Laws § 42-46-6(b).¹

We received a substantive affidavit on behalf of the Town Council from its legal counsel, Frederick G. Tobin, Esquire. In his affidavit, Attorney Tobin states, in pertinent part:

1. The Coventry Home Rule Charter in Section 3.13 requires a twelve (12) hour minimum advance notice to hold a special meeting of the Coventry Town Council...A special meeting notice was handed to each of the Coventry Town Council persons immediately prior to its 7:00 P.M. regular meeting on April 8, 2013...In addition, Coventry Town Council President Cote announced this special meeting at the regular Town Council meeting, said special meeting to be held on April 9, 2013.
2. A complaint was filed shortly thereafter by Bob Hevey alleging a violation of the Open Meetings Act (OMA), section 42-46-6(b) which requires forty-eight (48) hours notice prior to the holding of the meeting.

¹ The "special meeting" at issue was held on April 9, 2013. Notice of the April 9, 2013 meeting was posted on April 8, 2013.

3. The Coventry Home Rule Charter was adopted by the Town's voters on November 7, 1972 effective January 1, 1973. A special act of the General Assembly validated the Charter (P.L. 1973, Ch. 4). ***
 4. The OMA was adopted by the General Assembly by P.L. 1976, Ch. 330.
 5. Section 42-46-9 indicates that the OMA is "not to be construed to be in amendment of or in repeal of any other applicable provision of law..."
 6. There appears to be, therefore, two (2) statutes, each with a differing minimum notice requirement.
 7. The Coventry Town Council followed the Charter requirements. The OMA complaint alleges that the Coventry Town Council did not follow the OMA.
 8. The issue appears to be whether the OMA overrules the Coventry Town Charter or whether the Town Charter overrules the OMA.
 9. To avoid having to have lengthy litigation regarding this issue, the Coventry Town Council placed on its April 22, 2013 agenda a proposed resolution to confirm its earlier vote which is the subject of this controversy. Said matter was placed on the Secretary of State's website on April 19, 2013 and posted the same date in compliance with both the Coventry Town Charter and the OMA.
 10. The Resolution adopted on April 9, 2013 [was] Resolution 35-13-4354...
 11. It is the belief of the undersigned that the confirmation of the Coventry Town Council renders the current complaint moot since any issue that may have arisen as a result of the April 9, 2013 meeting has ceased to exist as a result of Resolution 39-13-4359.
- ***
14. Because of the confirmatory vote on April 22, 2013 the undersigned believes that the issue has become moot and therefore the complaint should be dismissed.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to determine whether this Department believes that an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Town Council violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

Here, we are presented with two statutes or legal provisions: the OMA and the Coventry Home Rule Charter ("Charter"), and the question whether the OMA and the Charter conflict. The OMA requires that all public bodies provide written notice of their meetings within forty-eight (48) hours of a meeting. R.I. Gen. Laws § 42-46-6(b). The notice shall include the date the notice was posted, the date, time, and place of the meeting, and a statement specifying the nature of the business to be discussed. *Id.* The Charter, however, only requires a twelve (12) hour minimum advance notice to members of the Coventry Town Council when convening a "special meeting." Specifically, the Charter provides:

Section 3.13. Special meetings.

Special meetings may be held at the call of the president, or, in the absence of the president, at the call of the vice-president, or at the call of three (3) or more members. Notice of a special meeting shall be delivered to each member or left for the member at the member's home or place of business at least twelve (12) hours prior to the time fixed for the special meeting. Any member may waive the requirement of notice of a special meeting, and such waiver shall be entered in the record of the proceedings of such special meeting. The purpose of a special meeting shall be stated in the notice of the meeting, and no business shall be transacted at any special meeting other than that stated in the notice. (Emphasis added).

In Town of Johnston v. Santilli, the Court held:

...that '[w]hen local laws conflict with general laws of statewide application, the former must defer to the latter.' ...This rule, however, does not apply when the conflicting charter provision has been legislatively ratified... In such instances, we view the conflicting charter provision as 'a special act [that] takes precedence over any inconsistent provisions of the general laws.' 892 A.2d at 128-29. (Emphasis added).

According to Attorney Tobin's affidavit, the Charter was legislatively ratified in 1973. As such, the stage is set for a conflict between the OMA and the Charter if this Department determines that these two provisions do indeed conflict. If possible, this Department must give effect to both provisions. See id. at 137-38.

After careful review of the pertinent sections of both the Charter and the OMA, however, this Department finds that the "special meetings" provision of the Charter does not conflict with the forty-eight (48) hour notice requirement of the OMA.² In the Charter, the twelve (12) hour

² In support of his position, Attorney Tobin cites Rhode Island General Laws § 42-46-9, which states that the OMA is "not to be construed to be in amendment of or in repeal of any other applicable provision of law***." Since there is no conflict between the OMA and the Charter, this section of the OMA is inapplicable to the specific facts at hand.

notice language only applies to members of the Town Council, not to members of the public.³ Section 3.13 of the Charter states that “[n]otice of a special meeting shall be delivered to each member or left for the member at the member’s home or place of business at least twelve (12) hours prior to the time fixed for the special meeting.” Conversely, under the OMA, public bodies are required to provide forty-eight (48) hours notice to the public of a meeting of a public body. The OMA states that “[p]ublic bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date.” See R.I. Gen. Laws § 42-46-6(b). Since the Charter does not address notifying the public of a public meeting, we find that there is no conflict. Thus, the Town Council is subject to the OMA, and in particular, Rhode Island General Laws § 42-46-6(b). As a result, the Town Council violated the OMA when it failed to provide forty-eight (48) hours notice to the public of the meeting held on April 9, 2013.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA].” R.I. Gen. Laws § 42-46-8.

From the evidence presented, it appears that the Town Council held a properly noticed meeting on April 22, 2013, at which time the Town Council confirmed the vote taken on April 9, 2013 to appropriate money to the Coventry Fire District. While subsequent action taken by the Town Council renders injunctive relief moot, this Department may still find a willful or knowing violation and initiate suit to impose civil fines. See Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 794-95 (R.I. 2005) (“The fact that one remedy - injunctive relief - may have been rendered moot does not affect the viability of the case or the remaining remedies.”); see also VanDyke v. Chariho Building Committee, OM 10-04.

Although this Department finds a violation, we do not find evidence that the violation was willful or knowing. See R.I. Gen. Laws § 42-46-8. The evidence presented shows that the Town Council presumed the Charter took precedent over the OMA for the reasons stated in Attorney Tobin’s reply. The Town thus chose to follow the Charter’s provisions rather than the provisions of the OMA. While we find that this interpretation was incorrect, we cannot find that it was a willful or knowing violation. This finding does, however, serve as notice to the Town Council that it is subject to the OMA in future similar circumstances, and this finding may serve as evidence as a willful or knowing violation in the future.

Although the Attorney General will not file suit in this matter, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8(c). The OMA allows the complainant to file a complaint within ninety (90) days from the date of the Attorney General’s

³ In fact, after review of the Charter, this Department finds no language to address notification of the public.

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closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later. See id. Please be advised that we are closing this file as of the date of this letter.

Thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in cursive script that reads "Maria R. Corvese".

Maria R. Corvese
Special Assistant Attorney General
Extension 2225

MC/pl

Cc: Frederick G. Tobin Esq.